1941- 1952 series.

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File No. O. Bar Council 1941 - 1952

Legal Deptt.

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Subject:— Opinions under the Indian Bar Council Act 1928.

R. L. A's Vol

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Legal Department, Bombay,

Vol.No.O.Bar Council/1944

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2	R.I.No.7351/14.6.48 U.o.r. to Adv.Genl. No. 7649/12.8.48 R.I.No.10657/24.8.48 (Adv.Genl' sopinion No.35 dt.23.8.48 O. O. 8211/26-8-48.)	Letters Patent Appeal No. 33/46.His Holiness Sardar Sayedna Taher Saifuddin Saheb, the High Priest of Shaikh Dawoodi Bohara Vs. The Advocate General, Bombay Appearance of Ex-Govt. Pleader in the above matter against Govt. question whether the act of the G; Pleader amounts to pro-fessional mis-conduct.	3-20
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5.	R.I.No.3006/21-2-50 D.No.324/5-1-51	Question regarding proposed disciplinary action against Shri D.N. Deshpande a practising Advocate in the Presidency Magistrate's Court for professional or other mis-conduct within the meaning of sec.10(1) of the Bar Councils Act, 1926.	25-28
6.	O.No. 767-Confl./ 2-8-51	Question regarding moving the High Court by the Commissioner of Police, Bombay in respect of Shri D. N. Deshpande Advocate, under sec. 10(2) of the Indian Bar Councils Act, 1926.	29-30

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The Government Pleader, High Court is usually a nominated member of the Bar Council, but if the High Court desires to make him an ex-officio member of the council by virtue of his status as leader of the Appellate Bar I can see no objection to the change being effected by necessary legislation. It is however for the administrative department to consider whether non urgent legislation should be undertaken in war time.

Id/- P.M.M.

17-2-44

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1279 dated 17th February 1944.

C.G.R. 3-7

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Statement of the Case.

The Mullaji Saheb of Dawoodi Bohras had filed a suit against the Advocate General, Bombay, in the court of the Additional First Class Sub-Judge, Surat, being suit No. 488x489 of 1936, for a declaration that the properties mentioned in the plaint were his own private properties and not wakf properties and that he was not the mutavalli thereof. The suit was defended on the lines of the brief accompanying G.R. L.D. No. 1325, dated 3.3.1936 and certain other grounds and was conducted by Rao Bahadur Jhaveri who was then Assistant Government Pleader (and later Government Pleader). The suit was heard by the First Class Sub-Judge, Surat and a declaration was granted as prayed for in respect of many properties. The decision being against the Advocate General, the matter was taken to the High Court and there it was found that no notice under section 80 of the Civil Procedure Code was given and as the point regarding notice could not be met, the plaintiff, Mullaji Saheb, agreed to a dismissal of the suit. The appeal was accordingly allowed and the suit was dismisses with costs.

After dismissal of the suit a notice appears to have been issued under section 6C of the Mussalman Wakf Act, 1923 in respect of the Wakf Properties which were the subject matter of the suit. In the matter this notice, it is reported that Dewan Bahadur Jhaveri, who had appeared on behalf of the Advocate General in the suit, is now appearing on behalf of the Mullaji Saheb. The Dawoodi Bohara Wakf and Trust Welfare Association which is interested in the properties have objected to D.B. Jhaveri's

appearance and have requested the Collector of Surat to take steps to prevent him from appearing as he had once appeared on behalf of opponent, the Advocate General.

The Collector consulted the present District Government Pleader, Surat, in the matter who opined as follows: -

"I am unable to give any definite opinion because I do not know what instructions were given to Dewan Bahadur (then Rao Bahadur) Jhaveri and it cannot be said whether the instructions so given are likely to be misused without knowing the exact nature of the instructions. Theoratically speaking if Dewan Bahadur (then Rao Bahadur) Jhaveri did receive any particular instructions from this Association, then it will not be proper for him to use those instructions while appearing for the Mullaji Saheb, and if he appears for Mullaji Saheb, he is likely to consciously or unconsciously use these against Government and the Association and so he should not appear for Mullaji Saheb. However the matter viz. Mis. application No. 85 of 1934 is an entirely independent matter, though it is an allied matter, and technically speaking Dewan Bahadur Jhaveri can appear for Mullaji Saheb in Miscellaneous application No. 85 of 1934, the client instructing Dewan Bahadur Jhaveri in the suit was the Advocate General and Government and not the Association and client i.e. the Government does not engage him for a allied matter, he will be at liberty to appear for the other side. The Dawoodi Bohara Association was not his client unless it be that Government authorized the association to give instructions to Dewan Bahadur Jhaveri and on its

on its behlaf and what the association 13 to 15
told him would not be instructions of a client given in confidence. If the same is divulged or improperly used, it may not be a high ethical professional standard to be followed in the profession, but technically he is not wrong."

The matter not being free from doubt, the Collector of Surat has referred the matter to R.L.A. for advice.

The conduct of Dewan Bahadur Jhaveri in appearing for the Mullaji Saheb, when once he had appeared for Government in allied proceedings, appears objectionable though it may not amount to misconduct. The Bombay Bar Council does not appear to have framed any special rules for professional conduct of pleaders this Province under clause (a) of section 15 of the Indian Bar Councils, Act 1926; and in the circumstances rules relating to unprofessional conduct, framed by the Allahabad Bar Council, which are of practical help and of universal application may be looked into. Rule 5 of those Rules provides as follows:-

5."It is not professional misconduct if, in the absence of any instructions from the first client, an advocate appears for the opposite party in a subsequent proceeding which is not directly connected with or in continuance of the first proceeding. Briefs may not be accepted in execution proceedings or in appeals following engagement in the suit itself, or in sessions court following engagement in original trial or commitment proceedings."

In the light of this Rule, it appears that Mr. Jhaveri should not have appeared in the present case on behalf of the Mullaji Saheb. His conduct appears definitely unprofessional (cf. Government Pleader Vs. Bhagubhai I.L.R. 36 Bom. 606); though it may not amount to misconduct sufficient to lodge a com-

~~xxxxxx~~ plaint

complaint under section 10(2) of the Bar Councils Act, 1926. As, however, the matter is not free from doubt, the Advocate General, Bombay, is requested to advise and to suggest what steps should be taken to prevent Dewan Bhadur Jhaveri from appearing in the case.

o/c Sd/- P.M.L.
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No.7649
dated the 12th August 1948.

C.G.R. 4-7

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No.35 of 1948.

ADVOCATE GENERAL's CHAMBERS,
HIGH COURT,
Bombay, 23rd August 1948.

U.R. to the Advocate General of Bombay, No.7649, dated the 12th August 1948.

O P I N I O N.

According to the High traditions of the Bar, whenever a counsel has appeared for a party A, it is not desirable that he should appear for the opposite party. If, however, in a subsequent suit or subsequent proceedings in connection with the same suit- party A does not offer Brief to Counsel and Counsel does not feel in any way embrarrassed to appear for the opposite party, there would be nothing to prevent him from doing so. According to professional etiquette, counsel, in all probability, would not like to appear for the opposite party but that is a matter entrirely left to Counsel and if he does not feel in any way embarrassed, he can appear for the opposite party.

Sd/-

Offg. Advocate General.

Office of the R.L.A.

There are no papers in Legal Department in regard to the restoration of the Legal Practitioners' sanads which were withdrawn on account of their participation in political movements.

The question of disciplinary action against Pleaders and Advocates for misconduct & rests entirely with the High Court and cases where proceedings were initiated against Legal Practitioners on account of their participation in political movements are reported in 36 B.L.R. 1136 and 37 B.L.R. 722.

o/c Sd/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D.)(Spl.) No. 7367 dated the 2nd July 1949.

C.G. R. 4-7

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Office of the R.L.A.

The Advocate enrolled under the Indian Bar Councils Act, 1926, would be entitled as of right to ~~xxx~~ practise before a Mamlatdar under the Bombay Tenancy and Agricultural Lands Act, 1948, while the pleaders who are not so enrolled but hold sanads under the Bomaby Pleaders Act, 1920, would not be entitled to such right unless a notification is issued under sections 7 and 8 by Government permitting them to appear before the Mamlatdar in such proceedings. In view of the opinion expressed by the High Court, it would be for the consideration of Government as a matter of policy to decide whether pleaders should be allowed to appear in proceedings under the Bombay Tenancy and Agricultural Lands Act.

Sd. P.M.Lad
30/9
Remembrancer of Legal Affairs.

U.R.to R.D.,No.13922, dated the 4th October 1950.

MRP.
16/8/56.

Office of the R.L.A.

The question referred to the R.L.A. concerns the proposed disciplinary action against Shri D.N. Deshpande, a practising advocate in the Presidency Magistrates' Courts. The acts enumerated by the Commissioner of Police in his letter (page21) are sufficeint for a prima facie case against Shri Deshpande for "professional or other misconduct" within the meaning of section 10(1) of the Bar Councils Act, 1926. The procedure to ~~xx~~ be followed in such cases is pointed out by Shri. Singh, the then Government Pleader, High Court, in his note of 21-5-1930. (H.D.File 7213/2-I of 1930 pp. 29-33 Slip A). The High Court has also confirmed that procedure by stating that "in case of Advocates upon receipt of a complaint made that the Advocate has been guilty of misconduct, the High Court may reject the case summarily or refer the case for inquiry to the Bar Council or courts on thier own motion so refer." (H.D. File 7213/2-II of 1930 pp. 131 Slip B). This means that it will be for the chief Presidency Magistrate to move the High Court for taking disciplinary action against Shri Deshpande. The public Prosecutor, Bombay may be requested to bring the circumstances to the notice of the Chief Presidency Magistrate, Bombay and ~~xxxxx~~ invite him to take such action as he thinks necessary in the manner indicated above.

o/c Sd/-P.M.L.

Remembrancer of Legal Affairs.

U.R.to H.D. No. 324 dated the 5th January 1951.

C.G.R. 4-7

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